

BEFORE THE DEPARTMENT OF NATURAL
RESOURCES AND CONSERVATION
OF THE STATE OF MONTANA

* * * * *

IN THE MATTER OF APPLICATION FOR)
BENEFICIAL WATER USE PERMIT NO.) FINAL ORDER
13180-g76L BY VERNILE BRADSHAW)
* * * * *

The Proposed Findings of Fact, Proposed Conclusions of
Law and Proposed Order as entered by the Hearing Examiner on
September 29, 1980, are hereby adopted as the Findings of
Fact, Conclusions of Law and Final Order.

FINAL ORDER

1. Subject to the conditions and limitations listed
below, Provisional Permit No. 13,180-g76L by Vernile Bradshaw
is hereby granted to appropriate 600 gallons per minute not
to exceed 287.5 acre-feet per annum from a well in the NW1/4
NE1/4 NW1/4 of Section 25, Township 19 North, Range 20 West,
M.P.M., in Lake County, Montana. Water is to be diverted
from April 15 to October 15, inclusive, of each year for new
sprinkler irrigation on 30 acres and for supplemental
sprinkler irrigation on 125 acres all in the NW1/4 of Section
25. The water is to be diverted at a rate of 600 gallons per
minute up to 75 acre-feet per annum for new sprinkler
irrigation and at a rate of 600 gallons per minute up to
212.5 acre-feet per annum for supplemental sprinkler
irrigation. The water is to be diverted by means of a well
greater than 250 feet deep.

2. Provisional Permit No. 13,180-g76L is granted subject to existing rights in the source of supply and any final determination of those rights as provided by Montana Law.

3. The Permittee shall grout the well to a depth of at least 250 feet.

4. The Permittee shall install an adequate flow metering device in order to allow the flow rate and volume of water diverted to be recorded. The Permittee shall keep a written record of the flow rate and volume of all waters diverted including the period of time and shall submit said records to the Department upon request.

5. The well shall be so constructed that water is not wasted, allowed to contaminate other water supplies or sources, and that any flowing artesian well be capped or equipped so that the flow of water may be stopped when not being put to beneficial use.

6. The final completion of the well shall include an access port of at least 0.50-inch diameter, located so that the static water level in the well may be adequately measured.

7. The Permittee shall only apply the waters granted herein to those lands specified in said Section 25 of paragraph 1 above to which he has the legal right to

irrigate. If the Permittee does not obtain the legal right to irrigate those specified lands which he currently does not own within the time period allowed for perfecting this permit, then the volume of water granted under this permit shall be reduced accordingly.

8. The issuance of the Provisional Permit by the Department in no way reduces the Permittee's liability for damages caused by the Permittee's exercise of this Provisional Permit, nor does the Department in issuing the Provisional Permit in any way acknowledge liability for damage caused by the Permittees exercise of this Provisional Permit.

RECOMMENDATION

1. It is recommended that the Objectors observe the water levels in their wells and the flow in their springs and keep an accurate record of such during the irrigation season. Such records should include water level or flow, method of measurement, date and time of measurement, precipitation to date, quantity of water pumped from the well, and year, month, and day measured. It is recommended that the Objectors acquire this information for their own protection.

NOTICE

The Hearing Examiner's Final Order may be appealed in accordance with the Montana Administrative Procedures Act by filing a petition in the appropriate court within thirty (30) days after service of the Final Order.

DATED this 14th day of October, 1980.

David L. Pengelly

DAVID L. PENGELLY, D. N. R. & C.
HEARING EXAMINER

BEFORE THE DEPARTMENT OF NATURAL
RESOURCES AND CONSERVATION
OF THE STATE OF MONTANA

* * * * *

IN THE MATTER OF APPLICATION FOR)
BENEFICIAL WATER USE PERMIT NO.) PROPOSAL FOR DECISION
13180-g76L BY VERNILE BRADSHAW)
* * * * *

Pursuant to the Montana Water Use Act and Montana
Administrative Procedures Act, after due notice, a hearing
was held on June 27, 1980, at Polson, Montana, for the
purpose of hearing objections to Application for Beneficial
Water Use Permit No. 13,180-g76L, David Pengelly, Hearing
Examiner, presiding.

The Applicant, Mr. Vernile Bradshaw, appeared at the
hearing and presented testimony in support of the
Application. Mr. Bradshaw was represented by legal counsel,
Mr. Don Peterson, Polson, Montana. The Applicant introduced
one (1) exhibit, to wit:

Applicant's Exhibit :

A-1 Map showing location of Applicant's proposed well
location of the wells and springs of Objector Mr.
Harriman, and the location of 15 other wells within the
vicinity of the proposed project. Also included in
Exhibit A-1 are a series of well logs from the wells
located on the map. The well logs are numbered 1-7, 10-
11, and 14-15. The missing well logs (8-9 and 12-13)
were not available at the time of the hearing.

The Applicant's Exhibit was entered into the record with no objections.

Five (5) Objector's, the Harriman Trout Company, Mr. and Mrs. George Patterson, Mr. and Mrs. Blaine Normandeau, Mr. and Mrs. Bernard Weber, and Ms. Pearl Anderson, were present at the hearing. Dr. Gary Grimsted, a consulting geologist, presented testimony on behalf of the Harriman Trout Company. None of the Objectors were represented by legal counsel. No exhibits were introduced on behalf of the Objectors.

Present on behalf of the Montana Department of Natural Resources and Conservation were Arlin Krogstad, Hearing Representative; Roger Noble, Geo-Hydrologist; Jim Rehbein, Kalispell Water Rights Bureau Field Office Manager; and Vicki Woodrow, Hearings Recorder. No exhibits were introduced by the Department and the Department was not represented by legal counsel.

SUMMARY OF RECORD

1. On June 2, 1977, the Department received an Application for Beneficial Water Use Permit No. 13,180-g76L, by Vernile Bradshaw to appropriate 1.33 cubic feet per second or 600 gallons per minute of water not to exceed 335.5 acre-feet per annum. The water is to be diverted by means of a well approximately 300 feet deep at a point in the NW1/4 NE1/4 NW1/4 of Section 25, Township 19 North, Range 20 West,

M.P.M., and used for new irrigation on 90 acres and supplemental irrigation on 65 acres, all in the NW1/4 of said Section 25 and containing a total of 155 acres, more or less. The water is to be diverted from April 15 to October 15, inclusive, of each year.

2. On September 28, October 5 and 12, 1977, the Department caused to be duly published in the Ronan Pioneer, Ronan, Montana, Notice of Application for Beneficial Water Use Permit No. 13,180-g76L.

3. On November 10, 1977, the Department received an objection to the above Application from David and Margaret Harriman.

4. On November 14, 1977, the Department received an objection to the above Application from the Flathead Irrigation Project-Bureau of Indian Affairs.

5. On August 28, 1978, the Flathead Irrigation Project-Bureau of Indian Affairs withdrew their objection to the above Application on the condition that the Applicant not withdraw water from a source less than 250 feet deep.

6. On July 31, 1979, a hearing in the above matter was held before Hearing Examiner Forrest Tevebaugh, at Polson, Montana. Due to a dispute over the volume of water being applied for in the Application, Mr. Tevebaugh ordered that

the Application be revised and readvertised before a continuation of the hearing would be held.

7. The above application was revised and readvertised in the Ronan Pioneer on October 10, 17 and 24, 1979. The revised Application is for 600 gallons per minute up to 335.5 acre-feet per annum to be diverted from a well in the NW1/4 NE1/4 NW1/4 of Section 25, Township 19 North, Range 20 West, M.P.M., Lake County, Montana. The water is to be diverted from April 15 to October 15, inclusive, of each year. The water is to be used for new sprinkler irrigation on 30 acres at a rate of 600 gallons per minute up to 75 acre-feet per annum, and for supplemental irrigation on 125 acres up to 260.5 acre-feet per annum for a total of 335.5 acre-feet per annum on 155 acres, more or less, in the NW1/4 of said Section 25. The water is to be diverted by means of a well approximately 250 feet deep or deeper.

8. The Department received the following objections to the above revised Application:

Blaine G. and Mary June Normandeau, 11-5-79

Pearl L. Anderson, 11-6-79

Flathead Irrigation Project, 11-6-79

United States of America, Department of Interior,
Solicitors Office, 11-19-79

Bernard M. and Anna M. Weber, 11-19-79

Harriman Trout Company, 11-23-79

Charles E. and Clella A. Norbury, 11-26-79

Frank J. Charette 11-29-79

Phillip W. and Veta E. Gainan 11-29-79

Confederated Salish and Kootenai Tribes of the Flathead
Reservation, Montana, 12-3-79

9. On June 27, 1980, a hearing in the above revised
Application was held in Polson, Montana.

PROPOSED FINDINGS OF FACT

Based on the transcript of the hearing and the
information contained in the Department's file in this
matter, it is found:

1. That the Applicant intends to appropriate up to 2.5
acre-feet per acre for new sprinkler irrigation on 30 acres
for a total of 75 acre-feet per annum; and 1.7 acre-feet per
acre on 125 acres of supplemental irrigation for 212.5 acre-
feet per annum for a total diversion of 287.5 acre-feet per
annum.

2. That the Applicant does not currently own the south half of the NW1/4 of Section 25, Township 19 North, Range 20 West, M.P.M.

3. That there are other deep wells within the valley that are capable of producing water at the rate the Applicant seeks to divert.

4. That the wells and springs of the Objectors are located in shallow, confined, perched aquifers.

5. That the source of water for the Applicant's proposed diversion is a deeper aquifer than that used by the Objectors.

6. That the degree of hydrological connection between the shallow aquifers where the Objectors wells and springs are located and the deeper aquifer where the Applicant's proposed well is located is not known.

7. That grouting the Applicant's proposed well to a depth of at least 250 feet will lessen the possibility of adverse affect on prior appropriators withdrawing water from shallower aquifers.

PROPOSED CONCLUSIONS OF LAW

1. Section 85-2-311, MCA, 1979, states in part that "the Department shall issue a permit if:

1. there are unappropriated waters in the source of supply:

a. at times when the water can be put to the use proposed by the applicant;

b. in the amount the applicant seeks to appropriate; and

c. throughout the period during which the applicant seeks to appropriate, the amount requested if it is available;

2. the rights of a prior appropriator will not be adversely affected;

3. the proposed means of diversion or construction are adequate;

4. the proposed use of water is a beneficial use;

5. the proposed use will not interfere unreasonably with other planned uses or developments for which a permit has been issued or for which water has been reserved;"

2. Section 85-2-401, MCA, 1979, states in part that "Priority of appropriation does not include the right to prevent changes by later appropriators in the condition of water occurrence, such as the increase or decrease of stream flow or the lowering of a water table, artesian pressure, or

water level, if the prior appropriator can reasonably exercise his water right under the changed conditions."

3. It is concluded that there are unappropriated waters in the source of supply at times when the water can be put to the use proposed by the Applicant; in the amount the Applicant seeks to appropriate; and throughout the period during which the Applicant seeks to appropriate, if the amount requested is available.

4. It is concluded that the rights of prior appropriators will not be adversely affected by the granting of this permit, subject to certain conditions in the order.

5. It is concluded that the proposed means of diversion or construction are adequate.

6. It is concluded that the proposed use of water is a beneficial use.

7. It is concluded that the proposed use will not interfere unreasonably with other planned uses or developments for which a permit has been issued or for which water has been reserved.

8. Section 85-2-312 (1), MCA, 1979, states in part that, "The Department may issue a permit for less than the amount of water requested . . . It may issue a permit subject to terms, conditions, restrictions, and limitations it

considers necessary to protect the rights of other appropriators, . . ."

9. Nothing decided herein has bearing on the status of water rights claimed by the Applicant other than those herein applied for, nor does anything decided herein have bearing on the status of claimed rights of any other party except in relation to those herein applied for, to the extent necessary to reach a conclusion herein.

Based on the Proposed Findings of Fact and the Proposed Conclusions of Law the following Proposed Order is hereby made:

PROPOSED ORDER

1. Subject to the conditions and limitations listed below, Provisional Permit No. 13,180-g76L by Vernile Bradshaw is hereby granted to appropriate 600 gallons per minute not to exceed 287.5 acre-feet per annum for a well in the NW1/4 NE1/4 NW1/4 of Section 25, Township 19 North, Range 20 West, M.P.M., in Lake County, Montana. Water is to be diverted from April 15 to October 15, inclusive, of each year for new sprinkler irrigation on 30 acres and for supplemental sprinkler irrigation on 125 acres all in the NW1/4 of Section 25. The water is to be diverted at a rate of 600 gallons per minute up to 75 acre-feet per annum for new sprinkler

irrigation and at a rate of 600 gallons per minute up to 212.5 acre-feet per annum for supplemental sprinkler irrigation. The water is to be diverted by means of a well greater than 250 feet deep.

2. Provisional Permit No. 13,180-g76L is granted subjected to existing rights in the source of supply and any final determination of those rights as provided by Montana Law.

3. The Permittee shall grout the well to a depth of at least 250 feet.

4. The Permittee shall install an adequate flow metering device in order to allow the flow rate and volume of water diverted to be recorded. The Permittee shall keep a written record of the flow rate and volume of all waters diverted including the period of time and shall submit said records to the Department upon request.

5. The well shall be so constructed that water is not wasted, allowed to contaminate other water supplies or sources, and that any flowing artesian well be capped or equipped so that the flow of water may be stopped when not being put to beneficial use.

6. The final completion of the well shall include an access port of at least 0.50-inch diameter, located so that

the static water level in the well may be adequately measured.

7. The Permittee shall only apply the waters granted herein to those lands specified in said Section 25 of paragraph 1 above to which he has the legal right to irrigate. If the Permittee does not obtain the legal right to irrigate those specified lands which he currently does not own within the time period allowed for perfecting this permit, then the volume of water granted under this permit shall be reduced accordingly.

8. The issuance of the Provisional Permit by the Department in no way reduces the Permittee's liability for damages caused by the Permittee's exercise of this Provisional Permit, nor does the Department in issuing the Provisional Permit in any way acknowledge liability for damage caused by the Permittees exercise of this Provisional Permit.

RECOMMENDATION

1. It is recommended that the Objectors observe the water levels in their wells and the flow in their springs and keep an accurate record of such during the irrigation season. Such records should include water level or flow, method of measurement, date and time of measurement, precipitation to date, quantity of water pumped from the well, and year,

month, and day measured. It is recommended that the Objectors acquire this information for their own protection.

NOTICE

This Proposed Order is offered for the review and comment of all parties of record. The review and comment period shall commence with the service of this Proposed Order and shall end ten (10) days thereafter. No extensions of time for comment will be granted.

The Final Order in this matter will be sent to all parties by certified mail.

The Department's Final Order may be appealed in accordance with the Montana Administrative Procedures Act by filing a petition in the appropriate court within thirty (30) days after service of the Final Order.

DATED this 29th day of September, 1980.

David L. Pengelly

DAVID L. PENGELLY, D. N. R. & C.
HEARING EXAMINER

AFFIDAVIT OF SERVICE
(Proposed Order)

STATE OF MONTANA)
) ss.
 County of Lewis and Clark)

Gale Greer, an employee of the Montana Department of Natural Resources and Conservation, being duly sworn on oath, deposes and says: That, on September 26, 1980, he deposited in the United States mail, "certified mail, return receipt requested," a copy of the Proposed Order by the Department Hearing Examiner on the application by Vernile Bradshaw, Application No. 13,180-s76L, for a permit to appropriate water, addressed to each of the following persons or agencies:

Certified Nos. 51063 to 51075

1. Vernile Bradshaw; Route 1, Box 108; St. Ignatius, MT 59865
2. Mr. Donald K. Peterson; Christian, McCurdy, Ingram & Wold; Professional Center Building; Polson, MT 59860
3. Mr. E. L. Meredith; U.S. Department of the Interior; Office of the Solicitor; P. O. Box 1538; Billings, MT 59103
4. Mr. R. Anthony Rogers; Wilkinson, Cragun & Barker; 1735 New York Avenue, M. W.; Washington, DC 20006
5. Mr. George L. Moon; Flathead Irrigation Project; Bureau of Indian Affairs; P. O. Drawer G; St. Ignatius, MT 59865
6. Mr. and Mrs. Blaine G. Normandeau; Route 1, Box 106; St. Ignatius, MT 59865
7. Mr. and Mrs. Charles E. Norbury; Route 1, Box 104; St. Ignatius, MT 59865
8. Ms. Pearl L. Anderson; St. Ignatius, MT 59865
9. Mr. and Mrs. Philip W. Gainan; Route 1, Box 107; St. Ignatius, MT 59865
10. Mr. and Mrs. Bernard M. Weber; Route 1, Box 118; St. Ignatius, MT 59865
11. Mr. Frank J. Charette; Route 1, Box 173D; St. Ignatius, MT 59865
12. Harriman Trout Company; Rural Route 1, Box 173; St. Ignatius, MT 59865
13. Mr. Roger Noble; Geologist; D.N.R.&C.; Helena, MT 59601 (hand deliver)
14. Mr. David Pengelly; Hearing Examiner; D.N.R.&C.; Helena, MT 59601 (hand deliver)
15. George S. Patterson; Route 1, Box 119; St. Ignatius, MT 59865

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION
 by Gale Greer

STATE OF MONTANA)
) ss.
 County of Lewis and Clark)

On this 26th day of September, 1980, before me, a Notary Public in and for said State, personally appeared Gale Greer, known to me to be the Hearing Recorder, of the department that executed this instrument or the persons who executed the instrument on behalf of said department, and acknowledged to me that such department executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

Beth Lamberson
 Notary Public for the State of Montana

Residing at Helena

My commission expires 6 Oct 1982

CASE # 13180